IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Rajendra Singh. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 1579/2006
against the order dated 5-9-2006 passed
by the Additional Chief Judicial Magistrate,
Bali, district Pali, in Cr. Case No.218/2006.

...

Date of Order: December 19, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. B.S. Rathore, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
None present for the non-petitioner No.2 though served.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 5-9-2006 passed by the Additional Chief Judicial Magistrate, Bali, district Pali (for short, "the trial Court" hereinafter) in Criminal Case No. 218/2006, whereby the trial Court took cognizance of the offence under Section 166 IPC and issued process by summoning the petitioner through a bailable warrant. The petitioner seeks setting aside the impugned order and quashing the proceedings.

I have heard learned counsel for the petitioner and

the Public Prosecutor for the State. Carefully gone through the order impugned passed by the trial Court.

The facts and circumstances giving rise to the instant criminal miscellaneous petition are that non-petitioner No.2 filed a complaint before the trial Court on 17-7-2006. The complaint was sent to the police for investigation under Section 156 (3) of the Code. It appears that the complaint was subsequently registered as a crime report. However, the trial Court, noticing that the complaint sent for investigation to the police, was not registered as a crime report on the very day and, therefore, the Officer Incharge of the Police Station, being a public servant, disobeyed the lawful order, took cognizance of the offence and issued the process.

It is contended by the learned counsel for the petitioner that though the present petitioner was the Officer Incharge of the Police Station being the Station House Officer, but on the date when the complaint was received by the Assistant Sub-Inspector of the concerned police station, the present petitioner proceeded on privilege leave from 20-5-2006 to 12-6-2006 and thereafter he joined the duty and again went on leave from 19-6-2006 to 21-6-2006 and thereafter he was assigned out station duty from 24-6-2006 to 27-6-2006 in connection with some V.I.P. Visit at Jaisalmer and, therefore, during the period the complaint remained with the concerned

police station, the present petitioner was not at the Police Station but he was either on leave or on official duty at Jaisalmer and thereafter the report was registered, therefore, according to the learned counsel for the petitioner, there is no disobedience of the lawful order of the trial Court by the petitioner.

On careful perusal of the order impugned, it appears that the complaint filed by the non-petitioner No. 2 and sent to the police was received by the Assistant Sub-Inspector Mohan Singh on 6-6-2006 whereas on the relevant date i.e. on 6-6-2006, the present petitioner was on privilege leave i.e. from 20-5-2006 to 12-6-2006 and therefore, in my view, there is no disobedience of the order of the trial Court by the present petitioner. No injury has been caused to the non-petitioner No. 2, the complainant. The trial Court recorded the statement of the non-petitioner No.2 under Section 200 of the Code as also the statements of the witnesses under Section 202 of the Code and, therefore, no injury appears to have been caused to the non-petitioner No.2.

Even otherwise, in compliance of the order of the trial Court, FIR No. 93 dated 3-7-2006 for the offences under Section 498-A, 406 and 323 IPC has been registered by the police.

From the events noticed above, upto the end of June, 2006, the petitioner was away from the police station on

government duty in connection with some VIP visit to Jaisalmer and prior to that, he was on privilege leave as noticed above. On return from the official duty, the crime report was registered, which is evident from the perusal of a copy of the FIR placed on record. In the circumstances, therefore, in my view, there is no sufficient ground and material on record to proceed against the present petitioner for the offence under Section 166 IPC and, therefore, the order impugned, taking cognizance of the offence and issuing process against the petitioner, cannot be sustained and liable to be set aside.

In the result, the criminal miscellaneous petition is allowed; the impugned order dated 5-9-2006 passed by the trial Court in Criminal Case No.218/2006, qua petitioner Rajendra Singh, is set aside and the proceedings against the present petitioner stand quashed.

(H.R. PANWAR), J.

mcs